IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.2202 OF 2002

Dinesh Devadatta Kamat	...	Petitioner
Vs.		
Vijaykumar N. Mehandale	...	Respondent

Mr. D.D. Kamat, petitioner in person.

Mr. P. Desai for the respondent.

CORAM: SMT. RANJANA DESAI, J.

DATED: 31ST MARCH, 2005.

P.C.:-

1. The petitioner is one Dinesh Devadatta Kamat, who is one of the sons of Devadatta Kamat, against whom the decree of eviction came to be passed by the Civil Judge, Junior Division, Kalyan on 28/8/1992 in Civil Suit No.174 of 1980. The suit was filed praying for possession on the ground of subletting as well as on the ground that the tenant has acquired separate accommodation. The original tenant filed his written statement denying that he had acquired a flat in Prayag Raj Apartments because the said accommodation was exclusively owned by one of his sons Sunil Devadatta Kamat. The original tenant contended that he continued to reside in the suit premises along with his son Dinesh Devadatta Kamat i.e. the petitioner herein. The said suit came to be decreed

on 28/8/1992 holding that the original tenant was in possession of separate accommodation and the said tenant was not using or occupying the suit premises.

2. Being aggrieved by the said judgment and decree, an appeal came to be preferred in the District Court at Thane being Civil Appeal No.290 of 1992. The lower appellate court by its judgment and order dated 31/1/1995 agreed with the findings of the trial court and dismissed the appeal. The petitioner filed a writ petition in this court being Writ Petition No.770 of 1995. The said writ petition came to be dismissed by this court on 22/2/1995. The observations of this court may be quoted.

> "The courts below have found that though the tenant has acquired suitable alternative accommodation in the name of Sunil, the acquisition is for the benefit of the tenant and all his family members and on that count, the decree for eviction is passed. I do not think any exception is possible to be taken to that view of the matter especially in this writ jurisdiction. The writ petition is rejected."

3. Being aggrieved by the said judgment and order, Mr. Dinesh Devadatta Kamat, who is the petitioner herein, approached the Supreme Court. The Supreme Court

dismissed the appeal and confirmed the view of the High Court. The Supreme Court observed that the petitioner herein contended that the findings of the courts below were perverse inasmuch as the accommodation acquired by Mr. Sunil, one of the members of the family, was exclusively for his benefit and not for the benefit of the joint family. It was further observed that apart from stating the above, he has not been able to point out with reference to the records, how this finding is either perverse or not based on any evidence. It was further observed that the three courts below have concurrently come to the conclusion that the accommodation acquired in the name of Mr. Sunil was for the benefit of the entire family and the said accommodation was a suitable alternate accommodation and, therefore, the respondent-landlord was entitled for possession of the suit premises for their own use and occupation. The Supreme Court quoted the findings of the Civil Judge in Civil Suit No.174 of 1980 with approval and I may also quote the same again.

> "Admittedly deceased Devadatta was tenant in the suit premises prior to purchase by plaintiff. It is also not in dispute that he resided upto 1980 in the suit premises as tenant. Dinesh married in 1989 and his wife is serving in BMC. There is no any evidence produced by the defendants like voter list or ration card etc. to show

that Dinesh Kamat was residing in the suit premises during 1969. Dinesh Kamat is running the business of astrology and earning money thereby. He is also Union Leader of Organisation".

4. The Supreme Court further observed that this plea of the trial court has been accepted both by the appellate court as well as the writ court and this being a finding on question of fact, there was no reason to interfere with the same.

5. It appears that before the Supreme Court, at one stage when the Supreme Court expressed that it was not inclined to interfere with the concurrent findings of fact, a request came to be made on behalf of the petitioner that some time may be granted to vacate the suit premises. Mr. Bhatt, the learned counsel appearing for the petitioner in the Supreme Court made a submission that he will be withdrawing the appeal provided one year's time was granted to the petitioner to vacate the suit premises. Accordingly, the order was passed dismissing the appeal as withdrawn and granting an year's time to vacate the suit premises on the petitioner filing an undertaking in the usual terms before the Registry of the Supreme Court. The Supreme Court noted that after the order was passed, certain applications were filed before the Supreme Court making allegations against the counsel, who represented the petitioner in the Supreme

Court. In view of the serious allegations, the counsel withdrew his appearance. The Supreme Court has noted that the petitioner was pemitted to submit written submissions. The petitioner submitted written submissions. The Supreme Court has further noted that the written submissions were perused, the petitioner was heard and the appeal was dismissed on merit.

6. After disposal of the appeal by the Supreme Court, a notice of the Darkhast was served on the petitioner asking him to say as to why the said Darkhast should not be executed. On 16/4/2002, the petitioner filed an application purporting to be an application under section 47 of the Civil Procedure Code for dismissal of the execution application. The decree holder filed his say on 16/4/2002. The petitioner in the meantime also filed Regular Civil Suit No.171 of 2002 against the decree holder for a declaration that the decree in R.C.Suit No.174 of 1980 is not binding on him and for injunction restraining the decree holder from executing the decree and taking possession of the suit premises. On 26/11/2002, after hearing both the parties, the Civil Judge, Junior Division, Kalyan, rejected the said application. The petitioner preferred a review application. The said review application also came to be rejected on 19/12/2002. In this civil revision application, the petitioner has challenged the order dated 26/11/2002 rejecting his application (Ex-21) and order dated 19/12/2002 rejecting his review application.

7. I have heard Mr. Dinesh Devadatta Kamat, the petitioner in person. He has made serious allegations against all the advocates, who have represented him all through out. He has made serious allegations against Mr. Desai, the learned counsel for the respondent. He has gone to the extent of saying that the respondent - Mr. V.N. Mehendale has become insane and that the counsel has no authority to represent him. However, no material is produced before me to show whether Mr. Mehendale - the respondent herein has become insane or not. So far as the merits of the case are concerned, he has reiterated the same submissions, which were made before the Supreme Court. He contended that he has been cheated by all the advocates, who represented him. He has also made serious allegations against the Registry of this court and the Registry of the Supreme Court. Needless to say that these allegations are totally unsubstantiated. He has submitted that because the correct facts were not brought to the notice of the Supreme Court, the Supreme Court has passed an order against him. It is pertinent to note that the review application filed by the petitioner was also rejected by the Supreme Court. He almost tried to assail the Supreme Court's judgment before me. It is not possible for me to accept his submissions. He has reiterated the same submissions, which he has made before the courts below. I have already noted that the Supreme Court has affirmed the finding of fact that the accommodation acquired in the

name of Mr. Sunil was for the benefit of the entire family and the said accommodation was a suitable alternate accommodation. The Supreme Court has also affirmed the finding of fact of the Civil Judge, Junior Division, Kalyan in Civil Suit No.174 of 1980 that there is no evidence produced by the defendants like voters list or ration card, etc. to show that the petitioner was residing in the suit premises during 1969. Therefore, there is no substance in the contention that the orders passed by the courts below suffer from any infirmity. It can never be said that the order passed by the trial court which is confirmed upto the Supreme Court is a nullity. The Supreme Court having rejected the submissions, it is in fact, not necessary for me to deal with the same. In my opinion, after the decree of the trial court is confirmed by the Supreme Court and the Darkhast proceedings have been taken out by the respondent, this is yet one more attempt made by the petitioner to defeat the decree passed by the trial court in favour of the decree holder. It is pertinent to note that the suit is of the year 1980, and we are in the year 2005. It is unfortunate that the decree holder cannot realise the fruits of the decree till the year 2005. I find absolutely no substance in this civil revision application. Civil revision application is rejected. Needless to say that all the connected civil applications also stand disposed of and all interim orders stand vacated. At this stage, the petitioner appearing in person made a request that the status-quo may be

maintained. In the circumstances of the case, no order of status-quo can be granted. Request for status-quo is rejected.

(SMT. RANJANA DESAI, J.)